amending power of an unpopular judicial decision, this is certainly a function of the amending power nowhere recognized in the Constitution. To overrule a thoroughly argued and well considered decision, particularly through a fanciful interpretation of an amendment, is to create a precedent which will more than offset any protective advantage afforded by the rule of uniformity as now narrowly construed[14] by the courts.[15]

C. R. W.

A WITHDRAWN PLEA OF GUILTY ADMISSIBLE AS AN EXTRAJUDICIAL CONFESSION

The Supreme Court of Errors of Connecticut recently decided[1] that where the accused entered a plea of guilty and thereafter withdrew it, on trial for the offense the plea was admissible as an extrajudicial confession, inconsistent with the claim of innocence urged on the subsequent trial, not conclusive, but requiring further proof to establish the *corpus delicti* in order to justify a conviction. The numerous decisions in the courts of England and the United States upon the admissibility of confessions are in a hopeless and irreconcilable conflict, but in examining the historical development of this subject and the reasons for admitting or excluding this kind of evidence, the ruling of the principal case seems correct in principle, and in harmony with the modern and probable future development of the doctrine of confessions.

A plea of guilty before a grand jury or at a preliminary hearing before a magistrate or county judge is admissible in evidence where the defendant pleads not guilty when subsequently put on trial.[2] So, where the defendant had pleaded guilty in a police court for violation of a municipal ordinance the fact that that plea had been entered was admissible when he later pleaded not guilty to an indictment for the same offense under a state statute similar to the ordinance.[3] Where a plea of guilty is offered by the

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[14] *Knowlton v. Moore*, 178 U. S. 41.

[15] For an extrajudicial opinion contrary to the principal case, see Graves, The Income Tax Amendment, XIX Yale Law Journal, 506.

[1] *State v. Carta*, 96 Atl. (Conn.) 411. (Wheeler and Roraback, JJ., *dissenting*.)

[2] *Browning v. State*, 142 S. W. (Tex.) 1; *People v. Gould*, 70 Mich. 240; *Green v. State*, 40 Fla. 474.

[3] *Bibb v. State*, 83 Ala. 84; *Ehrlick v. Commonwealth*, 31 Ky. Law Rep. 401, 102 S. W. 289.

defendant, but refused by the court, it can not be given in evidence against him on trial.[4] This seems correct, because the same facts which made the plea untrustworthy as a judicial (conclusive) confession of guilt would make it untrustworthy as evidence of guilt to be left to the jury. When a pleading in a civil suit is amended or withdrawn, the superseded portion disappears from the record as a judicial admission, but by the weight of authority it can be used as evidence against the party who withdrew it.[5] In *Boots v. Canine,* it is said, "We should feel that we were doing an idle thing if we should undertake to cite authority upon the proposition that a party can not be deprived of his right to give in evidence an admission because the latter [the party making it] had withdrawn it. Even in criminal cases, an admission made by the accused before the examining magistrate is not rendered incompetent by a subsequent withdrawal. The withdrawal of an admission may, in proper cases, go in explanation, but it can not change the rule as to its competency. We have never until the argument in this case known it to be asserted that the withdrawal of a confession or admission destroyed its competency as evidence against the person making it. If it did, then criminals might destroy evidence by retractions, and parties escape admissions by a like course. The law tolerates no such illogical procedure. It is proper to show the withdrawal and all attendant circumstances for the purpose of determining the weight to be attached to the admission, but not for the purpose of destroying its competency."

In *People v. Ryan,*[6] it was held that after a plea of guilty had been withdrawn and a plea of not guilty substituted, the former plea of guilty was inadmissible as evidence against the accused, but in that case it appears from the report that there was no other evidence of guilt and the court excluded the evidence as a judicial confession. In *People v. Jacobs*[7] and *Commonwealth v. Ervine*[8] the defendant had been permitted to withdraw a plea of guilty and to plead not guilty, and the plea of guilty was held admissible

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[4] *State v. Meyers,* 99 Mo. 107.

[5] *Boots v. Canine,* 94 Ind. 408, 416; *Alabama Midland Co. v. Guilford,* 114 Ga. 627; *Caldwell v. Drummond,* (1903) 96 N. W. (Iowa) 1122; *Crews v. Yowell,* (1903) 76 S. W. (Ky.) 126. Contra: *Taft v. Fiske,* 140 Mass. 250.

[6] 82 Cal. 617.

[7] 151 N. Y. S. 522.

[8] 5 Dana (Ky.) 30.

against him as a confession. In the latter case the court said, "And if, as is certainly the case, parole evidence of such a confession made out of doors, would, in absence of proof tending to show that it had been improperly obtained, be admissible evidence to establish guilt, we think it unquestionable that the record of a confession in court, unimpeached as to the manner of its procurement, should be admitted. But the effect of the confession as proof of guilt, like that of other evidence, is subject to be repelled, and is from the nature of the proceeding, submitted to the judgment of the jury."

In the principal case the trial judge had an opportunity to pass on the facts which led the defendant to enter his plea of guilty both when the plea was entered and when it was later offered as evidence, and under the Connecticut rulings[9] his finding that the confession was not wrongly procured will not be overturned except in a case of clear and manifest error. Applying the orthodox test[10] of admissibility, it does not clearly appear that there was such an inducement in this case as to create a fair risk of a false confession.[11] The withdrawn plea of guilty was therefore rightly admitted as an extrajudicial confession inconsistent with his claim of innocence under the subsequent plea of not guilty.

S. H. S.

INJUNCTION—MANDATORY OR PROHIBITORY?

In a recent California case,[1] a temporary injunction was granted restraining the City and County of San Francisco from running an excess number of cars over terminal loops owned exclusively by the plaintiff street railroad, and over tracks which defendant owned in common with plaintiff. The defendant appealed and continued to run its cars, claiming the injunction to be mandatory in character as it required the defendant to do a positive act by relinquishing an incorporeal hereditament which

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[9] *State v. Cross*, 72 Conn. 722, 727; *State v. Willis*, 71 Conn. 293. See also *State v. Grover*, 96 Me. 363.

[10] I Wigmore on Evidence, §§ 824, 831.

[11] See *R. v. Baldry*, 2 Den. Cr. C. 430, 444; *Beckman v. State*, 100 Ala. 15; *State v. Jones*, 145 N. C. 466, 471. Chamberlayne, The Modern Law of Evidence, § 1485.

[1] *United Railroads of San Francisco v. Superior Court*, 155 P. (Cal.) 463.